



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2009-1021]

RIN 1625-AA09

Drawbridge Operation Regulation; New Haven Harbor,
Quinnipiac and Mill Rivers, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of three bridges across the Quinnipiac and Mill Rivers at New Haven, Connecticut, to relieve the bridge owner from the burden of crewing the bridges during time periods when the bridges seldom receive requests to open while still providing for the reasonable needs of navigation.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-1021 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-1021 in the

"Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, 212-668-7165, judy.k.leung-yee@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On January 13, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations New Haven Harbor, Quinnipiac and Mill Rivers," in the Federal Register (75 FR 1738). We received no comments on the proposed rule. No public meeting was requested, and none was held.

On December 26, 2012, we published a notice of proposed rulemaking; Reopening Comment Period, entitled "Drawbridge Operation Regulations New Haven Harbor, Quinnipiac and Mill Rivers," in the Federal Register (77 FR 75917). We received

no comments on the proposed rule; Reopening Comment Period. No public meeting was requested, and none was held.

B. Basis and Purpose

The Ferry Street Bridge at mile 0.7, across the Quinnipiac River has a vertical clearance in the closed position of 25 feet at mean high water and 31 feet at mean low water.

The Grand Avenue Bridge at mile 1.3, across the Quinnipiac River has a vertical clearance in the closed position of 9 feet at mean high water and 15 feet at mean low water.

The Chapel Street Bridge at mile 0.4, across the Mill River has a vertical clearance of 7 feet at mean high water and 13 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.213.

In 2009, the City of New Haven requested a change to the drawbridge operation regulations governing the Ferry Street Bridge at mile 0.7, across Quinnipiac River, the Grand Avenue Bridge at mile 1.3, across the Quinnipiac River, and the Chapel Street Bridge, mile 0.4, across the Mill River, to reduce the burden of crewing these bridges during time periods when historically there have been few requests to open the bridges.

As a result, the Coast Guard authorized a temporary test deviation (74 FR 27249) on June 9, 2009, to test the

proposed changes to the drawbridge operation regulations to help determine if a permanent change to the regulations would satisfactorily accomplish the bridge owner's goal and continue to meet the reasonable needs of navigation.

The test period was in effect from May 1, 2009 through October 26, 2009. There were no adverse impacts to navigation reported during the test period.

As a result of the test deviation we published a notice of proposed rulemaking entitled, "Drawbridge Operation Regulation; New Haven Harbor, Quinnipiac and Mill Rivers, CT," in the Federal Register (75 FR 1738) on January 13, 2010. The comment period for the NPRM closed on February 12, 2010. We received no comments in response to our NPRM. No public meeting was requested, and none was held.

The promulgation of the final rule was delayed due to the construction of the I-95 Pearl Harbor Memorial Bridge across the Quinnipiac River, at New Haven, Connecticut, which required land traffic detours impacting all three bridges during the initial phase of the new bridge construction. The Coast Guard delayed publication of the final rule to help facilitate vehicular traffic detours.

On December 26, 2012, because several years had passed since we first solicited comments on this rulemaking, we reopened the notice of proposed rulemaking with a request for comments to provide notice and opportunity for the

public to comment on this rulemaking before making the proposed changes permanent. We received no comments in response to the reopening of the NPRM and request for comments.

The existing drawbridge operation regulations, listed at 33 CFR 117.213, authorize a roving crew concept that requires the draw of the Ferry Street Bridge to open on signal from October 1 through April 30, between 9 p.m. and 5 a.m., unless the draw tender is at the Grand Ave or Chapel Street bridges, in which case a delay of up to one hour in opening is permitted.

The bridge owner would like to extend the above roving crew concept to be in effect year round.

The waterway users are seasonal recreational craft, commercial fishing and construction vessels.

The regulation governing the Tomlinson Bridge at mile 0.0, across the Quinnipiac River, will not be changed by this rulemaking.

C. Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking; reopening of comments. As a result, no changes have been made to this final rule.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below

we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be a "significant" regulatory action under those Orders because the above drawbridge operation schedule is being modified during periods of time with few requests for bridge operation. A prior test period of these new regulations met the needs of those mariners transiting the area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because we already tested this rulemaking from May 1, 2009 through October 26, 2009, with satisfactory results and no complaints from the waterway users in 2010 and 2012.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule, if the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive order 13211, Actions Concerns Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule was tested from May 1, 2009 through October 26, 2009. Satisfactory results were received from the test insofar as there were no adverse impacts to navigation. In addition, we received no objection to the operation schedule during or after the test period ended and found that the operation schedule met the reasonable needs of navigation. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.213 to read as follows:

§ 117.213 New Haven Harbor, Quinnipiac and Mill Rivers.

The draws of the Tomlinson Bridge, mile 0.0, the Ferry Street Bridge, mile 0.7, and the Grand Avenue Bridge, mile 1.3, across the Quinnipiac River, and the Chapel Street Bridge, mile 0.4, across the Mill River, shall operate as follows:

(a) The draw of the Tomlinson Bridge at mile 0.0, across the Quinnipiac River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m., noon to 12:15 p.m., 12:45 p.m. to 1 p.m., and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessel traffic.

(b) The draw of the Ferry Street Bridge at mile 0.7, across Quinnipiac River, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessel traffic. From 9 p.m. to 5 a.m. the draw shall open on signal if at least a one-hour advance notice is given by calling the number posted at the bridge.

(c) The draw of the Grand Avenue Bridge at mile 1.3, across the Quinnipiac River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not

open for the passage of vessel traffic. From 9 p.m. to 5 a.m. the draw shall open on signal if at least a one-hour advance notice is given by calling the number posted at the bridge.

(d) The draw of the Chapel Street Bridge at mile 0.4, across the Mill River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessel traffic. From 9 p.m. to 5 a.m. the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

Dated: February 14, 2013

Daniel B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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